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A NEGLECTED PERIOD OF GEORGIA HISTORY

BY THE EDITOR

Lord Macaulay, in an essay on History, makes this statement: "It ought to record *all* the slightest particulars of the slightest transactions—all the things done and all the words uttered during the time of which it treats. The omission of any circumstance, however insignificant, would be a defect * * * No picture, then, and no history, can present us with the whole truth, but those are the best pictures and the best histories which exhibit such parts of the truth as most nearly produce the effect of the whole." It may not, in spite of the learned writer, be always best to be very particular in the narration of some events, but there are instances in which the writers fail to give all the facts necessary to a full understanding of the matter under consideration. Such is the case in respect to the period in Georgia affairs now to be inquired into.

Two Georgia historians, Hugh McCall and Charles C. Jones, Jr., closed their treatises at a point just a little earlier than the time of which we are to treat, but some account of that period might have been embraced in both, and so have avoided the impression created of an abruptness in the way both works were finished. It is possible, however, that neither of them had the material for an exhaustive treatment of the public affairs as they then transpired. It is positive that the volumes prepared and published by the Compiler of State Records, thus far, do not contain material relating to the history of that particular period. Another historian of Georgia, Bishop William Bacon Stevens, barely touched upon the subject, and all that he wrote is contained in the space of three pages of the second volume of his History, calling attention to the fact that it was "a time which required sagacity, promptness and firmness." The latest historians have passed over that epoch without references to the important happenings of that time.

The first term of Edward Telfair as Governor of Georgia began on the 9th of January, 1786. Seventeen days after, that is to say, on the 26th, the General Assembly, meeting in Augusta, passed "An ordinance for empowering commissioners to fix on a place convenient for a seat of government, and to erect public buildings therein," said place "to be known by the name of Louisville;" and the third section of that ordinance declared "That the place of the meeting of the legislature, the residence of the Governor, the Secretary, Treasurer, Surveyor-General, and Auditor, shall be at Augusta until the State House and other public buildings shall be erected, and the next meeting of the Legislature shall be at Louisville." (Watkins's Digest, pp. 320-321).

In the Gazette of the 9th of February it was announced that the House of Assembly had elected the following as State officers: John Milton, Secretary; John McCall, Surveyor-General; Seth John Cuthbert, Treasurer, and John Berrien, Collector of Customs for the Port of Savannah. One week later, it was stated that the same body had made choice of these officers: John Houstoun, Chief Justice; Nathaniel Pendleton, Attorney-General; John Wereat, Auditor-General; William Houstoun, William Few and Henry Osborne, Delegates to Congress for the current year; and George Walton, William Few, Abraham Baldwin and William Pierce, Delegates to Congress for one year from November next. The last list was probably acted on by the Assembly on February 14th, as on that day adjournment of the House of Assembly was ordered until the third Monday in July, to meet in Augusta.

Mr. Seth John Cuthbert, the Treasurer, whose residence seems to have been in the City of Savannah, advertised in the Georgia Gazette, from the Treasurer's office, Savannah, 21st February, 1786, that "As this office is to be very shortly removed to Augusta, all persons residing in the low country, who have certificates or other private paper in it are requested to call immediately and take out or settle and adjust the same. It is expected that such Vendue Masters as have been neglectful in their taxes will pay an immediate attention to the settlement of them."

On the first of March following, the Governor and Council had the question of the boundaries of the State brought to their attention through a letter on which action was promptly taken. As this has always been a matter of considerable interest, we will now give the result of the deliberations of that body by quoting the following from the proceedings of the same:

“IN COUNCIL, MARCH 1st, 1786.

“The Board took under consideration the letter of John Woods, Esq., read yesterday.

“Whereupon the following instructions were sent the different agents of Indian affairs that reside in the Indian Nations.

“You are to know that the limits, boundaries, jurisdiction and authority of the State of Georgia does and of right ought to extend from the mouth of the River Savannah along the north side thereof and up the most of the northern stream or fork of the said River to its head or source; from thence in a due west course to the River Mississippi and down the said stream of the Mississippi to the latitude thirty-one degrees north, from thence in a due east course to the River Apalachicola or Chattahoochee and from the fork of the said River Apalachicola where Chattahoochee and Flint Rivers meet in a direct line to the head or source of the southernmost stream of the River St. Mary and along the course of the said river St. Mary to the Atlantic Ocean, and from thence to the mouth or inlet of the River Savannah.

“You are to take special care that no person or persons whatever do purchase or contract or cause to be purchased or contracted for or shall take or accept of a grant or conveyance of any Lands within the limits reserved for the Indian hunting grounds in this State from any Indian or body of Indians upon any pretence whatever.”

In this connection our readers are referred to an interesting article on this subject, by the Honorable George Hillyer, which was printed in the June number of this periodical of last year, and which they doubtless remember.

The body making those appointments adjourned on the 14th of February to meet in Augusta on the third Monday in July.

It is needless to dwell here upon the character of the men whose names have been listed above, nor to give even brief biographical accounts of them. Their record is too well known to students of Georgia history.

We now come to that period in the administration of Governor Telfair which caused a vast amount of excitement and bitter feeling while the unsettled condition of affairs lasted. One of the matters productive of a state of anxiety and perplexity was the threatened war with the Creek Indians; but that disaster was happily averted. Then came the great agitation among the high officials of the State, growing out of the changes provided for in the ordinance requiring the removal of the seat of government to Louisville. We will not attempt to make a story of this truly exciting episode in words of our own. The documentary evidence of the truth can speak better than any language we may use, and we proceed to give the same taken mainly from the file of the *Georgia Gazette*. We have already given the provisions of the ordinance making Louisville the capital of Georgia. The Gazette, in three consecutive numbers, March 23 and 30, and April 6, 1786, carried, as an advertisement, nearly a page of matter, of an official nature, beginning with an abstract from that enactment, certified by John Milton, Secretary of State, and giving the date of its passage. Then follow in regular succession the orders of the Executive Council now given:

IN COUNCIL, Augusta, 31st January, 1786.

Ordered,

THAT the Secretary of State, Treasurer, Surveyor General & Auditor, be required to take residence at Augusta, and that each of them report to this Board, as near as may be, what transportation will be required respecting their said offices.

Extract from the Minutes.

G. HANDLEY, Sec'y. E. C.

IN COUNCIL, Augusta, 2nd February, 1786.

His Honor the Governor sent the following message to the Honorable House of Assembly:

Council Chamber, Augusta, 2nd February, 1786.

Mr. Speaker and Gentlemen,

Upon a report made by the respective officers, whose residence are ordered at Augusta, a sum will be necessary for the transportation; and it appears proper that a guard be ordered for the security of the records, etc. The General Assembly will therefore be pleased to order a sum adequate to the emergency.

(Signed)

EDWARD TELFAIR.

G. HANDLEY, *Sec'y E. C.*

Extract from the Minutes.

In COUNCIL, Augusta, 4th February, 1786.

The following resolve of the Honorable House of Assembly was laid before the Board, viz.

House of Assembly, Augusta, 3rd February, 1786.

A message from his honor, the Governor, of yesterday, being read, Resolved, That his Honor, the Governor, be empowered to draw on the public treasury for a sufficient sum for the purpose of transporting the records and other public papers from Savannah to the present seat of Government; and that he also issue the necessary orders for a guard to attend the same.

(Signed)

"An Extract from the Minutes.

"SEABORN JONES, *C. C. A.*"

G. HANDLEY, *Sec'y E. C.*

Extract from the minutes.

IN COUNCIL, Augusta, 11th February, 1786.

Pursuant to a resolve of the Honorable House of Assembly, of the 3rd instant, empowering his Honor, the Governor, to draw on the public treasury for a sufficient sum for the purpose of transporting the public records and other papers from Savannah, the Board have approved of Mr. James Pearre, Junior, as a fit person to take charge of the aforesaid transportation, and have also approved of the Governor's drawing on the Treasurer for the immediate sum of 43l 17s.4d under certain restrictions.

Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

IN COUNCIL, Augusta, 13th February, 1786.

Ordered,

THAT the State Secretary, Treasurer, Surveyor General and Auditor, without delay do cause to be secured and put in good trunks, or other safe packages, all the records, and other documents or papers, that shall appertain to their respective offices that are in

the town of Savannah, marking on each package the office to which each trunk or package shall appertain; and the aforesaid officers are respectively also required to cause the said trunks and packages to be held in readiness, and to be delivered in charge to such person as this Board may direct.

An Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

IN COUNCIL, Augusta, 15th February, 1786.

The Board took up the regulations entered into the 11th inst., regarding the transportation of the records and other public documents belonging to certain offices now at Savannah.

Ordered, that the Secretary of State, Treasurer, Surveyor General and Auditor, deliver in charge to Mr. James Pearre such trunks, and other packages as are directed by this board the 13th instant. And the said James Pearre, for the purpose of transporting the said trunks and other packages from the town of Savannah to this place, is hereby required to contract for good covered wagons, and four good horses in each wagon and two drivers, and procure three able-bodied men, well armed and accoutred, and the said James Pearre, with the aforesaid men, shall act as a guard, and be and continue with the said wagons, from the time they set out from the town of Savannah until they arrive in the town of Augusta, and for which this shall be his warrant.

Ordered, That his Honor, the Governor, do draw a draft upon the Treasury in favor of Mr. James Pearre, for the sum of 43l. 13s. 4d. pursuant to a resolution of the Legislature dated the 4th instant, out of the immediate monies now in the treasury, the same to be charged to the contingent fund.

G. HANDLEY, *Sec'y. E. C.*

Extract from the minutes.

IN COUNCIL, Augusta, 28th February, 1786.

A letter from the Treasurer, dated Savannah, the 22d instant, was read, which appears to have been intended as a reply to the order of this Board of the 15th February for the removal of the Treasury.

Savannah, 22d February, 1786.

Gentlemen:

The promptitude with which the Treasury Office is ordered to be removed to Augusta puts it out of my power to serve the state in the capacity of Treasurer, without making sacrifices in my private affairs that I can by no means afford. You will therefore be pleased to appoint a person to succeed me in the office, to whom I will deliver the same, with everything appertaining to it, whenever he produces his credentials from you. As the Legislature did me the honor of re-appointing me to the office in their last session, I think myself bound in gratitude to make every possible return to a partiality particularly pleasing, because expressive of their approbation of my past conduct; and, from this principle, I would certainly accompany the office to

Augusta, and arrange and fix it there, before I retired from it, in such manner as to make it plain and easy for my successor to conduct it with that precision, and on that system, which it has been my study and labor to establish; but I am extremely sorry that this is not in my power, for my horses are so reduced, by my late journey to Augusta, that it was with great difficulty they could bring me down, and I have not a change of them; besides this, my family are just taking the smallpox, so that it would be impossible for me, with the least degree or propriety, to leave them. These circumstances, I hope, will plead sufficiently in excuse for my not accompanying the office to Augusta.

When I came into the office I gave a very special receipt to the late Col. Martin, who preceded me in it, for the papers that I received from him, and such a receipt I wish to have from the person who is to succeed me. This is the principal reason of my not forwarding the office by Mr. Pearre; and, indeed, did this reason not exist, so much has business, both public and private, pressed upon me since my return to Savannah, that I do not think I could have been ready to forward the office by this opportunity. The public business has chiefly accumulated from the time for receiving certificates in the office being on the brink of expiring; however, I hope, by the time that my present year will expire, which will be on the 20th of next month, to have all the books and papers so stated and arranged as to require very little adjustment at Augusta.

I shall immediately begin to make out lists of the certificates received into the office, that I may forward duplicates thereof, with the certificates, to you, when the office goes up; but this will be a tedious and troublesome part of the business, from the vast number of small certificates that have been received.

I shall also have my accounts stated with all possible dispatch for the examination of the Auditor.

I have had no tax returns made me yet for the last year, nor has a single farthing of cash come into the treasury, through any channel whatsoever, since I left Augusta.

With all possible respect, I have the honor to be, Gentlemen,
Your most obedient humble servant,
SETH JOHN CUTHBERT.

(Copy)

His Honor, Edward Telfair, Esquire,

Governor, and the Honorable the Members of the Executive Council, Augusta.

Ordered, That the said letter lie on the table for the perusal of the members.

The following report from Mr. James Pearre was laid before the Board and read:

TO HIS HONOR, THE GOVERNOR.

AGREEABLE to an order of the Executive Council I attended in Savannah with the wagons, etc., there received for the Secretary's office four packages of books and papers, which I have delivered to the Secretary of State; also a desk and stand with papers, which I

have delivered to the Surveyor General; also one box for the Auditor, now ready to be delivered; the Treasurer refusing to send his papers.

I am, Sir, your humble servant,

JAMES PEARRE.

(Copy)

February 28th, 1786.

His Honor, Edward Telfair, Esquire,
Governor of the State of Georgia.

Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

IN COUNCIL, Augusta, 2d March, 1786.

Ordered,

That the Treasurer's letter, which was read the 28th ult. and Mr. James Pearre's report of the same day, be taken under consideration.

Whereupon the Board proceeded in the following manner:

Whereas a variety of combined events have hitherto retarded and obstructed the full execution of that part of an ordinance to fix on a place for a seat of government, dated the 26th January, 1786, that relates to the residence of certain officers in the town of Augusta for a fixed time, among which are, The State Treasurer having, in opposition to the orders issued by this Board for the removal of the Treasurer's Office, neglected and refused to pack up or deliver any part thereof to the Officer appointed by this Board to receive and conduct the same to this place, which said neglect and refusal is considered as a breach of duty on the part of the aforesaid Officer.

The Board, deeply impressed with a due sense of the obligations they stand bound to discharge in support of the dignity and welfare of the commonwealth.

Resolved, That Seth John Cuthbert, Esquire, be, and he is hereby suspended from the office of Treasurer of this state.

Ordered, That the last clause of an ordinance, passed at Augusta the 26th January, 1786, locating certain public offices at Augusta, and all the Executive proceedings thereon, be published.

Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

IN COUNCIL, Augusta, 27th February, 1786.

Pursuant to an act of the Legislature, dated the 13th instant, the Sheriffs of the respective counties are each of them vested with all the powers that were, by a former law, in certain commissioners of confiscated estates.

Whereupon Ordered, That the Sheriffs within their respective counties take due notice that a clear statement be made of all and every species of property now remaining within the respective coun-

ties which did appertain to any person or persons named or described in the Act of Confiscation, and that each of them make a special report thereof to this Board.

An Extract from the Minutes.

G. HANDLEY, *Sec'y. E. C.*

On the 6th of April, when the foregoing appeared for the last time, the Gazette contained an editorial article, as follows:

We hear from Augusta that William Stith, sen., Esq., arrived about two months since in this State, was, two hours after his arrival, a candidate for the office of Chief Justice, for which he had *one* vote in the House of Assembly. Mr. Houstoun (John), who was elected, having declined, the Governor and Council, notwithstanding this positive rejection, appointed him to the office.

Query. Is a man not eligible to a seat in the House of Assembly, or even a vote, competent to receive the important office of Chief Justice? Or, is it not sporting with the legislative sense of the state to appoint a person to an office for which he had been refused by a full suffrage of the House?

It is said also, that the Hon. Joseph Clay, William O'Bryen, and William Gibbons, Esqurs., have been suspended in the office of Assistant Justices by the Governor and Council, and that other persons have been appointed to their stead.

Query. If the Executive have the right to suspend Civil Officers, can they appoint others? Should this be considered as lawful, it would be an overturning of the Constitution, which says, that the three Departments of Government shall be separate. In this case a wanton Executive might supersede all the appointments made by the House of Assembly, soon after the commencement of the year, and by others, and a suitable policy, might change the forms of government before the year expired.

Those queries called forth a very long article from a correspondent signing himself "Georgiensis," who must have been a lawyer, judging from its style, but it is too long to be given

here, and, besides, it is not of sufficient historical interest to warrant its reproduction. It did not appear until the 20th of April.

On Thursday, April 13th, the following matter appeared in the *Georgia Gazette*:

Savannah, 10th April, 1786.

Mr. Johnston:

By publishing in your Gazette of this week, for the information of the public, the following act of the Governor and Council, and letter from the Office, of the Executive Department at Augusta, you will oblige your humble servants,

John Houstoun, Joseph Clay, William O'Bryen,
William Gibbons, William Stephens, Richard
Wylly, Peter Deveaux, Samuel Stirk and James
Jackson.

On Public Service.

To John Houstoun, Joseph Clay, William O'Bryen, William Gibbons, William Stephens, Richard Wylly, Peter Deveaux, Samuel Stirk and James Jackson, Esquires,

County of Chatham.

Office of the Executive Department, Augusta, 23d March, 1786.

Gentlemen:

Inclosed you will receive an order of Council, of the 7th instant, suspending certain persons therein mentioned in the Office of Magistracy for the County of Chatham.

I am, Gentlemen,

Your most obt. and humble servant,

G. HANDLEY.

GEORGIA.

IN COUNCIL, Augusta, 17th March, 1786.

The Board proceeded to the order of the day, whereupon the following determination and order were taken:

When the events of human affairs are progressing to anarchy, and the leading principles of the Constitution are infringed, the laws and ordinances violated, and when the conductors of the opposition to the known order of government are chiefly persons whose peculiar situations render the guardianship of the laws the object of their care, the crime is peculiarly aggravated.

The violators of public duty with respect to office as well as that of good faith in the citizen, are objects of such magnitude as become truly interesting to the dignity and welfare of the commonwealth.

The Board, from the urgent necessity occasioned by such unwarrantable proceedings, and in order therefore that the fountain

of justice may run pure, and the laws and ordinances may be fully executed in the County of Chatham, have and do solemnly and unanimously resolve as follows:

That John Houstoun, Esquire, appointed to the office of Chief Justice be, and he is hereby suspended from exercising the duties of the aforesaid office.

That Joseph Clay, William O'Bryen and William Gibbons, Esquires, be, and each of them are hereby suspended from the office of Assistant Justice or Justices for the County of Chatham.

That William Stephens, Richard Wylly, Peter Deveau, Samuel Stirk and James Jackson, Esquires, be, and each of them are hereby suspended from the office of a Justice or Justices of the Peace for the County of Chatham.

Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

A full statement of the case on which the above suspensions, or rather dismissions, have taken place, will shortly be published.

Georgia Gazette, Thursday, April 13, 1786.

Mr. Johnston:

There is, in the affairs of life, a point at which absurdity itself disarms resentment, and, assuming a coarser appellation, excites no emotion but that of pity or contempt. Had Solomon lived in our day and witnessed some late proceedings in our State, he would, in all probability, have retracted his opinion, and confessed he saw in the political world, at least, one thing new—a dismissal from, preceding the acceptance, nay following the absolute refusal of, an office. Other countries for the advancement of justice in certain cases admit of fictions in law, but I believe it is endemial to our land, and has been reserved for the ingenuity of a modern administration to invent fictions in government for the ends of private vengeance. Permit me to inquire, for the whole of this business seems enveloped in mystery, on what grounds a dismissal from the place of Chief Justice could be applied to me? So preposterous an act must, in point of view, recoil, with disgrace, upon its author, and will forever remain a satire on record against both his head and his heart. Had I really been in possession, I make no scruple to say, this edict of suspension would have made no more impression on me than a bull wrapt in all its terrors, and accompanied with all its thunder from the Pope. However malignant in its nature, I should have felt it extremely harmless in its effects. Dignities and honors, the children of sovereignty, flow from the people; and as, under our form of government, we ascribe neither majesty nor infallibility, and but a very moderate title of pre-eminence, to a Governor, it would be highly ridiculous and inconsistent to sacrifice at his shrine the independence of a Judge, so essentially necessary, in the opinion of all writers, to national freedom and private happiness. Originally the only body in a free state entitled to question a Judge for his conduct or opinion is the people. By the 49th article of our Constitution that power is delegated to the House of Assembly, but how or where the Governor obtained by prerogative as it were, a concurrent jurisdiction with them is hard to discover. If his claim is founded it evidently proves by direct

inference the servant to be greater than the master, or, in other words, the Governor superior to the House of Assembly; for the latter, however impliedly powerful in other respects, hold their controlling authority in this only in consequence of a special grant from the people; whereas the former, the being of a year, and, politically speaking, but secondary in the people's choice, finds a title to it comprehended, though till now concealed, in his very appointment itself. Armed with such weapon, and to which may be easily added, as in the days of the Star-Chamber in England, restraints upon the press, with an abolition of trial by jury, (so formidable to tyrants and sacred to freemen) what might not an ambitious man, with very limited talents, accomplish? But there is no occasion to reason on the general principles of government, or argue by analogy, when we have a guide so directly in point. If the very first section of the Constitution of this State does not make the Judges as independent of the Governor as the Governor is of them, I know not what form of words could be employed to express such an intention. It is a misfortune incident to shallow politics to be deceived by habit. Without recurring to reason and principle we are apt to be misled by use, and conclude, because a King's Government formerly claimed the right of suspending a King's Judge, therefore a State's Governor has the same power over a State's Judge. But surely no man of common intellect and who barely knows the difference between a monarchy and a democracy, will maintain such a position, or insist on the comparison or inference being just. Besides, we are to recollect that this political stride of Britain was, ever after the Revolution of 1689, altogether confined to her American governments, and is really one of the very acts of tyranny and distinction assigned by Congress, in their Declaration of Independence, as causes of our separation; for in England, although the twelve Judges hold their appointments from, and are, in legal contemplation, servants of the Crown; yet the King has it not in his power to suspend, much less to dismiss, one of them from his office, or even to withhold or reduce his salary, unless in consequence of a former address from both Houses of Parliament. So materially do the notions of our Cabinet on the scale of liberty and politics differ from those of all the rest of the world.

But, as I waved all pretensions to the office of Chief Justice, it was not my intention, when I began, to enter into a discussion in this place of the tenure by which it is held. All I mean, or am anyway solicitous about, is to prevent, as far as I am concerned, any imposition on the public. To this end I shall lay before them a plain state of the case, and leave each one to his own remarks, as in truth the proceedings themselves will, to the most ordinary capacity, furnish a very sufficient comment. On the 4th of March I received the first regular intelligence of my being, unsolicitedly, and I am sure I may add unexpectedly, nominated by the Assembly which sat in Augusta to the office of Chief Justice. The Hon. Mr. Justice Clay and Mr. Justice O'Bryen were my authors, who at the same time informed me they had received a commission from the Governor to qualify me. I told them I was fixed in my determination to decline accepting of the appointment, and that I should request them to transmit my answer, which I would give, in writing, to the Governor, when

they returned the commission. This they politely undertook to do, and accordingly that very evening I sent to Mr. Clay a letter in the following words to be forwarded to Augusta:

Savannah, Ga., March 4th, 1786.

Sir:

It being this day notified to me by the Honorable Joseph Clay and William O'Bryen, Esqurs., that the Honorable the House of Assembly had been pleased to appoint me Chief Justice for the current year, and that in consequence thereof a commission had been sent down to them to qualify me for the office, I embrace the earliest opportunity of communicating to you, Sir, and the Honorable the Executive Council, my sentiments on this occasion.

Impressed as I am with the sincerest respect and gratitude towards my country, for this very distinguishing mark of their favor, I should have been happy, however inadequate my abilities may be to the task, to have endeavored at a discharge of that very important trust, did my private affairs admit of it. But my present situation, taken in every point of view as it regards myself and my own concerns, renders it impossible for me to accept of the appointment; and therefore I must and do decline the same; and request your Honorable Board will be pleased to fill up the office by some other nomination. I have the honor to be, Sir,

Your most obedient servant,
J. HOUSTOUN.

To his Honor Edward Telfair, Esq.,
Governor of the State of Georgia,
Augusta.

The matter then rested until the 10th of the same month, when I was surprised by the receipt of an order of Council, bearing date *three days forward*, in the following words, viz.:

IN COUNCIL, Augusta, 13th March, 1786.

Ordered,

That the Secretary of State prepare a *Dedimus Potestatem*, directed to the Honorable Joseph Clay, William O'Bryen and William Gibbons, Esquires, to empower them, or any two of them, to qualify the Honorable John Houstoun, Esquire, as Chief Justice of the State, agreeable to the said appointment by the Honorable House of Assembly of the 10th instant.

An Extract from the Minutes.
G. HANDLEY.

As I had already, in as strong language, by letter and otherwise, as I was able to use, declined the office, and had never done, or thought of doing, one act as Chief Justice, I took no further notice of the affair, until I was, on the 3rd instant, again surprised by the receipt of another account that the Governor had suspended me from, and appointed a successor to, the office of Chief Justice. Whether it is not a perversion of language, under the circumstances before related, to call the proceeding a suspension, is a point deserving a more serious inquiry than that by a newspaper. For my part I choose to call it by its right name—if it has any name at all—a dictatorial dismissal unencumbered by the previous forms of

charge, hearing, or trial. However, if it has gratified private resentment, or ministered to the passion and interest of party, I suppose the end will, by its author, be thought to sanctify the means; but of one thing I can assure him, if he took into his calculation to give me any uneasiness, he has missed of his aim, for as I can incur no reproach on this score, from any good citizen, I shall, secure in conscious rectitude, most heartily despise the opinion or attempts, however signified, of every bad one, whether in or out of office.

J. HOUSTOUN.

Savannah, 10th April, 1786.

Savannah, 10th April, 1786.

We, the subscribers, do hereby certify, That, having received a commission from his Honor, the Governor, to qualify John Houstoun, Esq., for the office of Chief Justice, to which he was lately, by the Honorable the House of Assembly which sat in Augusta, appointed, we did, on or about the fourth day of March last, call upon the said John Houstoun, and acquaint him with the purport of the said commission, and request to know when it would be convenient and agreeable to him to be waited upon in order to take the oath of office, and receive the other qualification prescribed by law for the said appointment. To which the said John Houstoun immediately replied, that his nomination being entirely without his knowledge or consent, he was fixed in his determination to decline accepting of the said office, and would request of us to transmit an answer, which he would give in writing, to the Governor, when we returned the commission. This we promised to do—and I, the subscriber, Joseph Clay, do further certify, that, to the best of my remembrance, on the evening of the before mentioned day, a letter from the said John Houstoun was brought to my house, directed to his Honor, Ed. Telfair, Esq., Governor of the State of Georgia, which I understood to be a letter declining the said appointment, and which letter, I, the subscriber, William O'Bryen, a few days after, forwarded by Col. Samuel Jack to Augusta, together with the commission before mentioned, and also a letter, subscribed by the said Joseph Clay and myself, informing the Governor that the said John Houstoun declined accepting of the said appointment. And we do further certify, That, at the last Superior Court held in Savannah, (after the receipt and return of the said commission) we sat as Judges thereof. But that the said John Houstoun did not appear as Chief Justice, or in any other character than as a private practitioner in the said Court, nor hath the said John Houstoun ever done one act as Chief Justice, but constantly and uniformly, from his first appointment, declared he could not, and would not accept of the said office. Given under our hands the day and year first above written.

JOSEPH CLAY,
WILLIAM O'BRYEN.

On the 20th of April the Gazette editorially said:

"We learn from Sunbury that on account of the non-attendance of the Chief Justice which prevented a formation of Court in the County of Liberty, the inhabitants of that County, after a convention of them in the Court House on the business of the term, were obliged to depart to their respective homes, which melancholy reflections strongly impressed on their minds of the fatal consequences which must necessarily ensue to society from the abandonment of it by the Judicial Power: *a most alarming effect flowing from still more alarming cause—the interference of the Executive with the Judiciary Department of Government.*"

At the same time a writer, with the signature "Crito," had much to say about the conditions then existing, ending his article in the language now repeated:

"I have been drawn into these reflections merely from the style and composition of those performances I have been mentioning, without any view to their political or moral tendency, or the absurdity of the measures they are meant to explain. Their arbitrary, unconstitutional, and capricious suspensions or dismissions of Magistrates, and of Officers after resignation and refusal of office, instead of enforcing and establishing that power and consequence which their authors pursue with so much ardor and perseverance, will evince to the world a childish, petulant, and impotent disposition to private revenge, altogether unworthy the head of a politician, the heart of a philosopher, or the dignity of a ruler, and are circumstances of so serious, weighty and alarming a nature as to claim the exercise of the ablest pens, and will in due time, I trust, become the subjects of Legislative inquisition. But our champions for self-importance should have considered, that, however, arbitrarily they may establish themselves in their present seat of power, the world will never submit to any mandate that they may issue for the violation of every principle of common sense and rule of grammar, the coinage of new words, and the perversion of the known and established meaning of the English language. As well might they attempt to divert the course of the sun, or, what would gain them more credit, at least in the intention, suspend the Grand Seignior from "the exercise" of his imperial functions, for permitting his subjects the Algerines to make war upon the United States."

The lengthy communication from Messrs. Houstoun, Clay, O'Bryen, Gibbons, Stephens, Wylly, DeVeaux, Stirk, Jackson, and Walton, with copy of a letter by them to the Governor

and the proceedings of the Council in removing the State officers, referred to therein, printed in the *Gazette* of April 27th, now follow :

Mr. Johnston :

The late proceedings at Augusta having excited public curiosity, and involving in them questions which go to the very essence of civil liberty, it may not be improper to state to the people at large, through the medium of your paper, the origin and progress of a dispute so singularly circumstanced both in regard to matter and manner. Every inhabitant of this county knows that, prior to the Revolution, and indeed until very lately, all deeds of conveyance and other papers (judiciary proceedings excepted) for the State at large were recorded in the Secretary's office. The 50th section of our present constitution directs that "every county shall keep the public records belonging to the same." An ordinance passed at Augusta, 26th February, 1786, ordains "that the place of the meeting of the Legislature, the residence of the Governor, the Secretary, the Treasurer, Surveyor General and Auditor shall be erected; and the next meeting of the Legislature thereafter shall be at Louisville." A vote of the House of Assembly, dated 3rd February, 1786, following this law, empowers "the Governor to draw on the public treasury for a sufficient sum for the purpose of transporting the records and other public papers from Savannah to the present seat of Government; and also directs him to issue the necessary orders for a guard to attend the same." On this the Governor and Council, by their order of the 13th February, 1786, directs that "the State Secretary, Treasurer, Surveyor General and Auditor, without delay, do cause to be secured and put in good trunks or other safe packages, ALL the records and other documents or papers that shall appertain to their respective offices that are in the town of Savannah, marking on each package," etc. And by a later resolve, dated the 13th of the same month, they require the aforesaid officers "to deliver in charge to Mr. James Pearre, such trunks and other packages as were directed by their Board the 13th instant." Mr. Pearre's arrival soon after in Savannah with his wagons for the papers brought on a question which presently resolved itself into two opinions—the one, that as the officers and offices were directed by law to be removed to Augusta, therefore all the records and papers belonging to them respectively must be comprehended as so many appendages, and that, even if the law had not been full on this head, yet the vote of the House of Assembly, and order from the executive authority, placed the matter in a light indisputably clear. The other opinion, with certainly more appearance of reason, was that the Constitution upon this occasion was to be a polar star for our guide; that, if it should be found on examination that either the Act or resolve of Assembly, was repugnant to the true intent and meaning of that instrument, such act or resolve would by the 7th as well as the last section of the Constitution, fall to the ground; but that it was the duty of every good citizen in the first place to collate the Law and the Constitution together, and see whether there was any variance between them; that if we construed the proceedings of the Assembly, (passing over the distinction between a law and a resolve) from the words "the records and other public papers," to have in object only such records and public papers

as could be constitutionally removed, such, for instance, in respect to the Secretary's Office, as acts of Assembly, bonds, and other deeds belonging to the public commissions, grants for land in the upper counties, with a great variety of other records properly called "public papers," or appertaining to the upper counties, there would be in that case no disagreement between the law and the Constitution. But, if we subscribed to the other opinion, and, with the Governor and Council, added the word ALL, by way of supplement to the law, then without doubt we should feel ourselves by the very words, as well as the obvious spirit and intention of the Constitution, obliged to halt, for that, if this order amounted to anything, it clearly amounted to this that every paper, viz., wills for estates in Chatham County, the registry of grants for lots in and adjoining the town of Savannah, though kept in a distinct book with several other records entirely local, (which happened to be in the Secretary's office) must, in the language of the Governor, be packed up, transported, located and obliged to take residence at Augusta. So glaring an act would, in our opinion, require neither casuistry nor technical knowledge to prove it a most unjustifiable outrage against the Constitution.

It is, Mr. Johnston, extremely clear, and universally admitted as a maxim, that if, in the construction of a law, there be two meanings, either of which may with perhaps equal plausibility be put upon a clause, the one correspondent and the other contradictory to a former law, that meaning shall be preferred which will stand with the former law. How much stronger will this rule hold when the Constitution, which can have no fellow equal, is, as it were, one of the parties in the dispute.

Convinced, then, that the late Act of Assembly by no means intended a violation of the Constitution, it became evident to the people that the error lay in the mode of execution. As there might have been a perfect harmony throughout the whole, had the order of the Executive followed the words of the Legislative Authority, it was a very natural inquiry what right the Governor and Council had to make any innovation in or addition to a law. Feeling no inclination to believe that the freemen of this state would, in imitation of the Parliament of Henry the 8th of England, ever ascribe the faculty of legislation to an Executive body, we did not hesitate to pronounce the proceeding of the latter, by the insertion of the word ALL, an assumption of power totally unauthorized by any law, usage or custom, of this country. As the order of the Governor and Council then so far exceeded the law, and in the same proportion in its tenor militated against the 50th section of the Constitution, we held ourselves warranted by the laws of God and man to prevent the execution of so much of it as appeared to be against the said law and constitution, and therefore did, at the request of a number of our fellow citizens, and by the voice of the inhabitants of Savannah in general, repair, without tumult or disorder, to the house where the papers of the Secretary's office were kept, and having sorted out the records of grants for all the lots in and five and forty-five acre lots adjoining the town of Savannah, and other books containing documents altogether of a private nature, and belonging (in ratio of at least fifty to one) to the inhabitants of the lower counties, delivered the same into the custody of James Bulloch, Esq., Clerk of the Court of the County of Chatham, who attended for the purpose of receiving them, and where we conceive, not only by the Con-

stitution, but also by an Act of Assembly passed on the 22d of February, 1785, they ought long since to have been deposited. But we deny that there was, to our knowledge, a single record or paper stopped or removed out of the Secretary's hands, which could, in strictness of language, be called "public" in any other view than as being in a public office, they being (except the grants of lots before mentioned) altogether the deeds and papers of and between individuals. And, so careful were we to avoid taking any books or papers that could be deemed state records, that we desired Mr. Stewart, the Clerk then attending in the Secretary's office, to examine all the books placed in the possession of Mr. Bulloch, and to point out any that were properly speaking "public," in order that they might not be removed from the Secretary's office.

This affair being over, the Secretary then proceeded with all the other papers of his office, amounting to no inconsiderable number, and arrived safely in Augusta, and thereby, in our idea, contrary to the tenor of the order of Council, fully complied with the ordinance, and at the same time kept within the pale of the Constitution.

As to there being no provision or exception in the ordinance respecting the papers of the lower counties, that may be easily accounted for on two grounds; firstly, Because, perhaps, it was thought the Clerk of the County Courts respectively had them all in possession, as might have been the case under the law before mentioned, secondly, Because, to have made an exception in favor of what the Constitution established, would have implied a paramount authority in the Legislature to act contrary thereto, did they so incline, a position too ridiculous for refutation.

If it be objected to us, that we, in particular, had no right to intermeddle in this business, we reply, that, as matters were circumstanced in regard to the Governor and Council, who were moreover at the distance of 120 miles, this duty, from the necessity of the case, devolved upon the county at large, and, as the general voice required something to be done, it seemed more eligible to do that which appeared legal and constitutional by a few who would take care, both from public and private motives, that none of the papers should be lost or injured, than run the risk of having it done in a manner less moderate, and with more danger of damage to the papers, by a course of people agitated with the idea that an attack was meditated against one of their chartered rights.

And in order to prevent a misrepresentation of our proceedings, and to convince the Executive Authority that no disrespect was intended against government, such of us as happened to be in town, when an opportunity offered for Augusta, wrote a letter to his Honor, the Governor, (copy whereof is hereunto subjoined) from which we conceive the most captionally inclined person cannot be able to educe evidence of a disposition to anything but peace, order and good government. And we disclaim all distinction of interest between upper and lower counties, and hold those as enemies to both who shall by such pretended difference endeavor to sow the seeds of jealousy between us.

After this candid and impartial elucidation of the whole transaction the public will no doubt be surprised to hear the sequel on the part of the Governor and Council. No sooner was the affair reported at Augusta than that Body (with all the solemnity and dread

of the Senate of Rome on discovering the conspiracy of Catiline) met in their Chamber, and commenced a shower of political vengeance. By an instrument of Government, singular to be sure, in respect to composition, but infinitely more so as to substance, they at once, without trial, hearing or evidence, laid all concerned under an interdiction. There is one thing, on a review of this matter, which we cannot easily account for, and that is this; why the blow was aimed altogether at the Judiciary department. Several of us have the honor to be Members of the Legislature; why not then as well suspended from our seats there as on the bench. The one department is not more distinct from and independent of the Executive than the other, and the history of the reign of Charles the 1st of England, and some of his predecessors, would have furnished precedents of the proceedings more perhaps in favor of vacating seats than suspending Judges. There is indeed a reason why Judges might be thought more in the way of tyrannick ambition than Members of Assembly; in case of prosecutions being commenced, the former would perhaps grant a Writ of Habeas Corpus even in the face of a Governor. Now, by locking up the whole Judiciary Department in a country where there is no Chancery, it became tantamount to a suspension of the Habeas Corpus Act; and thus the breach being effected by a political finesse, the genius of arbitrary government might soon be introduced.

But a superficial acquaintance with history would have shown those concerned that in England the claim of the Executive Authority of a controlling power over Judges, and that over Members of Parliament, ceased nearly at one and the same time, that is to say, they both ceased when the nation became too enlightened to wear the shackles of tyranny, and when it was virtually received as a principle in government that to be nominally a ruler was to be in fact a servant of the people. With us in America this badge of tyranny on the one hand, and of slavery on the other, never had place, even before the Revolution, but in the same manner and on the same footing as taxation without representation, or any other unconstitutional exertion of powers, and it is hardly probable that, at this early period of our emancipation from such claims on the part of Britain, we shall freely and voluntarily, without at least a struggle for it, resign into the hands of one of ourselves, under the name of Governor, so invaluable a privilege as the independence of Judges.

Although the public have been already presented with the resolve of the Executive for suspending us, yet, as that act makes a part of the present statement, we have subjoined a copy thereof, and some other proceedings thereon, to this publication, and shall conclude by observing, that, if it was deemed necessary to pass an act of indemnity to the Administration of 1785, for having without the express authority of law, though evidently for public good, appointed two supernumerary Justices of the Peace, we are at a loss to tell what will be sufficient to satisfy the consciences and save the reputation of that of 1786, for having contrary to the rights of human nature, our own local Constitution, and their positive oath of office, endeavored to annihilate a whole Department for no other crime than daring to question the legality of an Order of Council; and so unfortunately situated do the Executive appear to be in this business that it is impossible to acquit them of one charge without establishing upon them another. If they say they did not mean to annihilate the Department itself, it is clear they wished to reduce it to such a foot-

ing as to be upon any future occasion liable to be filled as the Governor and Council might think proper. There is an obvious distinction between a vacancy happening and a vacancy made; to provide against the one is a necessary object in every government, but to permit the other is at once to surrender the most valuable right we possess. We are, Mr. Johnston,

Your humble servants,

JOHN HOUSTOUN,
JOSEPH CLAY,
WILLIAM O'BRYEN,
WILLIAM GIBBONS,
WILLIAM STEPHENS,
RICHARD WYLLY,
PETER DEVEAUX,
SAMUEL STIRK,
JAMES JACKSON,
GEORGE WALTON.

COPY OF THE LETTER ABOVE REFERRED TO.

Sir:

Being informed that Mr. Stewart, assistant to Mr. Milton in the Secretary's office, had directions to move the several papers in that office to Augusta, among which were the records of this county from the first settling of this state until the present period, and which, by the mode established under our Constitution, do not now belong to that office, but to the Clerk of the county where the records of each county are, by the 50th article, directed to be deposited.

Under this idea, and impressed with the great distress that must naturally ensue to the inhabitants of this part of the State, should their records be removed to so great a distance from them and being, at same time, well assured, that it could not be the intention either of the Legislature or Executive Authority to remove any but public records, and not such as were entirely local, as those we are remarking on undoubtedly are, at least nine-tenths of them, relating to the property of the lower counties only.

We have caused them to be lodged in the Clerk of the County's Office and have taken this acknowledgment for the receipt of them, specifying each book, its contents and the number of pages, to prevent, as far as may be, any injury to those concerned, a copy of which you will receive herewith, and which will also be recorded in the Clerk's Office, and placed on the records of the Court.

We hope this measure will meet with your Honor's and the Honorable the Council's approbation, being entirely consistent with justice, public convenience, and the spirit of the Constitution.

We have been thus early in giving you and them information of our proceedings in this business to prevent any evil impression there are always too many ready on such occasions to do.

We have only to assure you, that nothing on our part will ever be wanting to give support to government, and render it respectable, as far as our respective situations may enable us. We have the honor to be, Sir,

Your most humble servants,

JOSEPH CLAY,
WILLIAM O'BRYEN,
WILLIAM GIBBONS,
WILLIAM STEPHENS,
RICHARD WYLLY,
SAMUEL STIRK,
JAMES JACKSON,
GEORGE WALTON.

To the Hon. Governor of Georgia.

Extract from the minutes.
G. HANDLEY, *Sec'y. E. C.*

PROCEEDING OF COUNCIL REFERRED TO.
GEORGIA.

IN COUNCIL, Augusta, 17th March, 1786.

The Board proceeded to the order of the day; whereupon the following determination and orders were taken:

When the events of human affairs are pregressing to anarchy, and the leading principles of the Constitution are infringed, the laws and ordinances violated, and when the conductors of the opposition to the known order of government are chiefly persons whose peculiar situation renders the guardianship of the laws the object of their care, the crime is peculiarly aggravated.

The violation of public duty with respect to office, as well as that of good faith in the citizen, are objects of such magnitude as become truly interesting to the dignity and welfare of the commonwealth.

The Board, from the urgent necessity occasioned by such unwarranted proceedings, and in order therefore that the fountain of justice may run pure, and the laws and ordinances may be fully executed in the County of Chatham, have and do solemnly and unanimously resolve as follows:

That John Houstoun, Esquire, appointed to the office of Chief Justice, be, and he is hereby suspended from exercising the duties of the aforesaid office.

That Joseph Clay, William O'Bryen and William Gibbons, Esquires, be, and each of them are hereby suspended from the office of Assistant Justice of Justices for the County of Chatham.

That William Stephens, Richard Wyly, Peter Deveaux, Samuel Stirk, James Jackson, Esquires, be, and each of them are hereby suspended from the office of a justice or justices of the peace for the County of Chatham.

The Board then postponed the further consideration of the communication of the Secretary of State until tomorrow morning ten o'clock.

Ordered, That tomorrow be the order of the day to proceed to fill up the intermediate vacancy of a chief justice, occasioned by the suspension of John Houstoun, Esquire, and also the vacancies of three Assistant Justices for the County of Chatham, occasioned by the suspension of Joseph Clay, William O'Bryen and William Gibbons, Esquires.

Extract from the minutes.

G. HANDLEY, *Sec'y. E. C.*

N. B. The said vacancies were accordingly filled up on the next day, by the appointment of another Chief Justice and three other Assistant Justices.

In the issues of the *Gazette* for May 11, 18 and 25 the first page is taken up with official acts of the Governor and Council and documents incident to those acts, in pursuance with an order calling for their publication. Beginning with the extract from the ordinance touching the location of the public offices at Augusta for the time being, the series of acts continues with the Governor's request for an appropriation to cover the expense of removal; notice of the election of John Houstoun as Chief Justice, with order to Jos. Clay and others to qualify him; the appointment of Pearre to remove the books, &c.; a list of records delivered to James Bulloch, Clerk of Chatham County, with his receipt, said list certified by the officers surrendering them, followed by the 50th article of the Constitution; affidavit of James M. Stewart, Clerk in Secretary's office, Augusta, that Messrs. Walton, Clay, O'Bryen, Gibbons, Stephens, Stirk, Wylly, Jackson, DeVeaux and John Houstoun did, on the 21st of February, call at the office of the Secretary in Savannah, which was locked, that several of them requested admittance, which was refused, and that on his return after absence on business he found them in his office when, without his consent, they took away the books referred to in the list given above; letter of John Milton, Sec'y. of State, to the Governor, reciting the above facts, and referring to his Honor the question whether those gentlemen had the right, under the 50th article of the Constitution, to hold those records; letter of the said gentlemen

to the Governor, admitting the truth of all the facts, and claiming their action was in the discharge of their duty, hoping it would be approved by the Governor and Council, "being entirely consistent with justice, public convenience, and the spirit of the Constitution," and ending with the assurance of their desire "to give support to government, and render it respectable as far as our respective situations may enable us;" the act of Council "from the urgent necessity occasioned by such unwarrantable proceedings," &c., in suspending from office the Chief Justice, Assistant Justices and Justices of the Peace of Chatham County; the appointment of William Stith, senior, as Chief Justice, and Nathanel Greene,* Joseph Habersham and William Gibbons, junior, Assistant Justices for Chatham County; statement that at the same time William Stith, senior, attended Council and took the oath of office; order that a copy of the communication of the State Secretary, and other papers, be sent to the Attorney General, and that he cause such process to be instituted as the laws of the State warrant and direct; authority to new appointees to constitute a Court, and to demand immediate surrender of the records, &c., with the appointment of Abraham Baldwin, William Few and Peter Carnes "in aid to the Attorney General in all cases touching the communication of the Secretary of State; all ending with an order that publication be made of the foregoing matters.

Another long letter from "Georgiensis" was printed in the *Gazette* for May 4, in which he was "happy to perceive that most persons agree in declaring that the Executive have not the power to suspend Judges," and ended by saying that "If, from an infringement of the law, an evil should arise, so alarming as to demand immediate removal, and yet not admit of the interference of the Executive, the Legislature might be convened, and the application of a remedy be referred to them."

*The appointment of General Nathanael Greene was made March 18, 1786, and he died June 19, following.

Other correspondents expressed their opinions on the matters which produced so much agitation, but we give only the very severe arraignment of Governor Telfair by one calling himself "Legion," in the Gazette of June 15:

TO HIS HONOR, THE GOVERNOR.

"Freedom of the Press, and Trial by Jury, to remain inviolate forever."—6th Article of the Constitution.

If physical cause have an influence on the moral faculty, it would be no difficult matter to trace the spring of your actions, since your promotion to the first office in the state; but, as we do not mean to blend your misfortunes with your faults, we shall pass the first over in silence and pay some little attention to the latter.

It is the peculiar happiness of these states that each of them has a written constitution, which may with propriety be styled the social Compact of the Citizens; and it is as remarkable as true that there is no other nation under the sun, nor do we read of any formerly, whose government is, or was, founded on a written constitution, wherein the powers of the several branches of the government have been accurately defined.

The constitution of this state divides the government into three great departments, viz. the Legislative, the Judiciary, and the Executive, and neither can "exercise the powers properly belonging to the other," without a breach of the Constitution and a violation of the people's rights. To this general rule, however, there is one exception; the 49th article declares, that "every officer of the State shall be liable to be called to account by the House of Assembly," thereby vesting the House of Assembly with ample authority to try and punish "every officer of the state" for misconduct, maladministration, etc., in an official capacity.

Your gubernatorial conduct has attracted the attention of almost every individual in the state; some are your friends, many are your enemies; but all join in condemning your measures. Whether the weakness of your head or the depravity of your heart has been most concerned in this business is not for us to inquire; nor whether the triumvirate that formed your cabinet council (who in the hour of danger have deserted your standard) first urged the idea of arbitrary power on your bewildered imagination; still the action is your own, and you stand accountable to "God and your country," by whom you will be tried. To follow the old and pious custom on such occasions after producing the charges, compassion may prompt us to say: "God send you a good deliverance!"

1.—*You* have assumed the Judicial authority, by condemning ten gentlemen, respectable citizens of the state, and inhabitants of the County of Chatham, for a supposed infringement of law, without summons, bearing, charge, or trial.

2.—*You* have assumed the Legislative authority, by appointing Assistant Justices for the County of Chatham, without any "vacancy happening" in those offices to warrant such appointments.

3.—*You* have assumed arbitrary and unconstitutional powers, by suspending Judges and Justices of the Peace, for their action as private citizens, thereby taking away "Trial by Jury," the terror of tyrants and sacred right of the people.

4.—*You* have suspended a solemn law of the state, by refusing credentials to a gentleman who is, by that law, appointed an Agent in the controversy now subsisting between this state and the state of South Carolina, in whose acknowledged abilities and long experience as a lawyer and a statesman the citizens of this state, most immediately interested, principally depended; thereby endangering the loss of that important cause to the state, and of considerable property to many industrious families.

5. *You* have refused to furnish credentials to one of the Continental Delegates, thereby counteracting the constitutional proceedings of the Legislature, injuring the Federal government by retarding the alteration of the 8th article of the Confederation, the law of this state requiring THREE Delegates to ratify the change.

6.—*You* have virtually suspended the Commissioner of the Loan Office, who is a Continental officer, by refusing to administer to him the oath of office, and to take the security directed by Congress, thereby depriving the citizens of this state who are creditors of the United States of those benefits which public creditors are now enjoying in our sister states.

7.—*You* have mutilated the records of the Executive Council, which are records of the state, and published spurious extracts, with a design to impose them on the good people of this state as genuine, thereby degrading the honor of government, the authenticity of all its public proceedings, and tending to bring the faith of the state into contempt.

These are the outlines of some of the many charges on which it is probable you will be arraigned by the Legislature at their next meeting. Whether you attempt to justify your conduct from precedent or, like Lord Chancellor Bacon, who lived in the reign of James I, of England, (with not one thousandth part of his abilities) you confess your crimes and sue for mercy, yet your injured country will demand redress. However the latter conduct may blunt the edge of resentment, your offences are of such a nature that you cannot reasonably hope to escape unpunished.

Having thus stated the business generally, we shall postpone a further inquiry for some future paper.

If aught will raise compassion in the breast of your peers, it is the ingratitude of your advisers, for it is said "there is honor even among thieves;" had you been successful in the attempt for arbitrary sway, they would, exclusively have basked in the sunshine of your power; but, fortunately for us, the scene is reversed,—you have failed in the attempt, and, "the Northern Star,"

Who rose like the rocket, but falls like the stick,
Has play'd you, like Arnold, a slippery trick.

LEGION.

Bishop Stevens, in his second volume, page 370, says that General Greene learning the facts, declined to serve, and he and Joseph Habersham resigned on the 16th of April. He adds: "The real merits of the case were very much distorted in the personal bickerings and party animosities which it fomented. The Governor laid the matter before the Assembly in July; though it was not until the 20th of November that the Secretary, having informed the Governor that he had received the books, the Council, on the same day 'removed every order and process directed in consequence thereof,' and the affair was amicably settled. The gentlemen of Savannah were evidently wrong; for, by their own showing, the documents which they retained were not merely those pertaining to Chatham County, but papers of the Trustees and President and Assistants of the Colony, acting for the whole territory embraced within the chartered limits of Georgia, and also records relating to property in other Southern Counties. Their action was indeed 'disorganizing in its tendency;' and it showed the promptness and vigor of Governor Telfair's administration that he took such effective measures to sustain the dignity of the Government and the majesty of the law. The circumstance is an instructive one, as it shows how a small question, of local interest, can act as the sharp edge of a wedge which, if driven home with force, may cleave asunder whole communities."

A fact worthy of mention is that so little seems to be known of William Stith, senior, to whom such high honor was paid. In an account of "The Bench and Bar of Georgia," written by the late Mr. Charles N. West for a voluminous work, "Memoirs of Georgia," he said that "Here we have another name which is nothing but a name, so far as the discharge of judicial duties is shown by the records of court, but of Chief Justice Stith there is no other public record known to us." Mr. Charles Edgeworth Jones compiled some years ago a list of the judicial officers of Georgia, and mentioned the names of William Stith and William Stith, Jr., but gave no information of them, saying that "The

records throw no light upon the subject." Mr. Thomas Spalding, writing to Stephen F. Miller, author of "The Bench and Bar of Georgia," from Sapelo Island, Oct. 19, 1850, said: "Admitted to the bar more than fifty years ago (certainly as far back as 1795), every gentleman that was on the bench in Georgia for the first twenty-five years after the Revolution I have received kindness from and personally knew, except one—the old Judge Stith, whom I never saw. His son, William Stith, afterwards Judge, I was intimate with. He was a good lawyer, an amiable and honorable and respectable man." We have not been able to ascertain the relationship of Justice Stith with the historian of Virginia. The elder Stith must have been a close friend of Governor Telfair, as the notice in the *Gazette* of the death of his wife, from small-pox, July 3, 1786, shows that it occurred at the house of the Governor.

In order to make this record more complete, we state that Seth John Cuthbert died November 10, 1788.